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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

RICHARD F. WEAVER, JR.,

Plaintiff,

v.

OREGON DEPARTMENT OF
CORRECTIONS; COLLETTE PETERS,
MICHAEL GOWER; LAURA STERLING;
KEVIN JACKSON; HUGO ENRIQUEZ;
ROBERT HILLMICK; CAMERON BAUER;
RICHARD POWELSON; ADAM ARCHER;
RODNEY CAREY; WILLIAM POWELL;
and BRIGITTE AMSBERRY,

Defendants.

Case No. 2:19-CV-02046-SB

DEFENDANTS' ANSWER TO PLAINTIFF'S
FIRST AMENDED COMPLAINT

Defendants, Colette Peters, Michael Gower, Laura Sterling, Kevin Jackson, Hugo Enriquez, Robert Hillmick, Cameron Bauer, Richard Powelson, Adam Archer, Rodney Carey, William Powell, and Brigitte Amsberry, by and through the undersigned, in response to Plaintiff's First Amended Complaint, admit, deny, and allege as follows:

1.

In response to paragraph 1, Defendants admit that Plaintiff was an Adult-in-Custody (AIC) at Two Rivers Correctional Institution (TRCI) from May 4, 2016 to December 20, 2017, and that on December 20, 2017, Plaintiff was transferred to Eastern Oregon Correctional Institution (EOCI) and was assaulted by another AIC in the cafeteria. Except as expressly admitted, paragraph 1 is denied.

2.

Defendants deny the allegations contained in paragraphs 2, 16, 17, 22, 23, 24 and paragraphs 26 through 30.

3.

Defendants admit the allegation contained in paragraphs 3, 8, 9, 10, and 14.

4.

In response to paragraph 4, Defendants admit that Colette Peters is the Director of the Oregon Department of Corrections (ODOC) and admit that she was involved in the decision-making process regarding housing policy, a discretionary function. Except as expressly admitted, paragraph 4 is denied.

5.

In response to paragraph 5, Defendants admit that Mike Gower is the Assistant Director of Operations Division for ODOC and admit that he was involved in the decision-making process regarding housing policy, a discretionary function. Except as expressly admitted, paragraph 5 is denied.

6.

In response to paragraph 6, Defendants admit that Laura Sterling is a Corrections Captain at Coffee Creek Correctional Facility (CCCF).

7.

In response to paragraph 7, Defendants admit that Kevin Jackson is in executive management at TRCI.

8.

In response to paragraph 11, Defendants admit that Richard Powelson was a Behavioral Health Services Manager at TRCI until August 23, 2019.

9.

In response to paragraph 12, Defendants admit that Adam Archer is a Corrections Captain at TRCI.

10.

In response to paragraph 13, Defendants admit that Rodney Carey is a Corrections Captain at EOCI.

11.

In response to paragraph 15, Defendants admit that Brigitte Amsberry was the Superintendent of EOCI starting July 1, 2017, and retired in December 2018.

12.

In response to paragraph 18, Defendants admit that TRCI utilizes the Cellmatch Program to house inmates appropriately. The program takes into consideration any conflicts which are documented and entered as an approved conflict. Except as expressly admitted, paragraph 18 is denied.

13.

In response to paragraph 19, Defendants admit that on October 25, 2011, Plaintiff arrived at Coffee Creek Intake Center (CCIC) and on November 16, 2011, he was transferred to Snake River Correctional Institution (SRCI). Defendants admit that on November 12, 2014, plaintiff was transferred to Oregon State Penitentiary (OSP) and housed in Disciplinary Segregation from

approximately November 20, 2014 to January 13, 2015. Except as expressly admitted, paragraph 19 is denied.

14.

In response to paragraph 20, Defendants admit that between January 13, 2015 to April 22, 2015, Plaintiff was housed at TRCI in DSU, until he was transferred to SRCI on April 22, 2015. Plaintiff was housed at SRCI in a series of Intensive Management Units (IMU) before being transferred to TRCI on May 4, 2016. At TRCI, Plaintiff was housed in Disciplinary Segregation Units, as well as on units 2, 3, 5, 10, 12, 13 and 22 before being transferred to EOCI on December 20, 2017. Except as expressly admitted, Defendants are without sufficient knowledge as to the truth of the allegations contained in paragraph 20, and therefore denies the same.

15.

In response to paragraph 21, Defendants admit that Plaintiff was transferred from TRCI to EOCI on December 20, 2017. At that time, Plaintiff requested and received a meeting with Lt. Powell regarding his housing placement. Plaintiff was given the option to reside on EOCI's east side or west side general population, or reside in DSU (not for disciplinary reasons) while a different housing assignment could be arranged. Lt. Powell offered for Plaintiff to speak to another AIC he knew from TRCI, and after Plaintiff's conversation with this person Plaintiff agreed to be housed in general population. Defendants further admit that, on December 20, 2017, Plaintiff was assaulted by another AIC in the West Dining Room. During his misconduct hearing, the assailant asserted that he was a self-admitted member of the Security Threat Group "IPO" or "Indian Pride Organization" and asserted that the assault was carried out on behalf of IPO. Except as expressly admitted, paragraph 21 is denied.

16.

In response to paragraph 25, Defendants incorporate their responses to the referenced paragraphs as if fully set forth herein.

17.

Except as expressly admitted or otherwise answered, Defendants deny each and every allegation in plaintiff's First Amended Complaint and the whole thereof.

DEFENSES

18.

(Failure to State a Claim)

Plaintiff's First Amended Complaint fails to state claims upon which relief can be granted.

19.

(Qualified Immunity)

Defendants acted in good faith and within their discretion pursuant to the constitutions, laws and statutes of Oregon and the United States, and Defendants' conduct did not violate any clearly established statutory or constitutional rights of which a reasonable official would have knowledge.

20.

(Failure to Exhaust Administrative Remedies)

Plaintiff failed to exhaust available administrative remedies.

21.

(Prison Litigation Reform Act)

Defendants assert all provisions of the Prison Litigation Reform Act, including but not limited to the requirement that plaintiff exhaust administrative remedies and limitations on recoverable damages.

22.

(Eleventh Amendment Immunity)

Plaintiff's claims are barred to the extent plaintiff sues defendants in their official capacities for money damages, and to the extent plaintiff seeks non-monetary relief such as

declaratory or injunctive relief (or “changing prison policy”) against individual defendants who do not create prison policies and without properly naming defendant(s) responsible for prison policies.

23.

(Discretionary Immunity)

Defendants are entitled to discretionary immunity.

24.

(Damages Limitations)

Plaintiff cannot recover punitive or non-monetary damages, and not against these Defendants.

25.

(Jury Trial Demand)

Defendants demand jury trial pursuant to Fed. R. Civ. P. 38(b).

WHEREFORE, having fully answered Plaintiff’s First Amended Complaint, Defendants pray for a judgment in favor of Defendants against Plaintiff, dismissing Plaintiff’s First Amended Complaint in its entirety and awarding Defendants their costs and disbursements incurred herein, and for such other and further relief as the Court may deem appropriate.

DATED December 9, 2020.

Respectfully submitted,

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